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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,896	08/20/2001	Michael Leon Kazar	SPIN-3	8068
7590	05/12/2005		EXAMINER	
Ansel M. Schwartz 201 N. Craig Street, Suite 304 Pittsburgh, PA 15213			THOMAS, SHANE M	
			ART UNIT	PAPER NUMBER
			2186	
DATE MAILED: 05/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/932,896

Applicant(s)

KAZAR, MICHAEL LEON

Examiner

Shane M. Thomas

Art Unit

2186

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 17-25.
Claim(s) objected to: 5, 6 and 10-16.
Claim(s) rejected: 1-4, 7 and 9.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

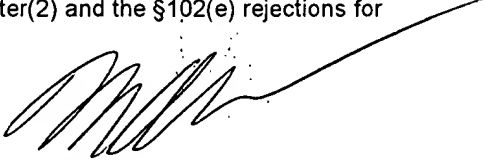
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: As per claims 3,4, and 7-9, the scope of the claims has changed and would require further consideration by the Examiner. Claims 3 and 4 now depend on claim 1 instead of claim 2. Claim 7 has been amended with the new limitation of utilizing a time-stamp based voting algorithm to exchange votes for a primary server. Refer also to #11 below.

Continuation of 11. does NOT place the application in condition for allowance because: Using a broadest, reasonable interpretation of claim 1, the limitations of claim 1 have been addressed by the Examiner on pages 8-9 of the Final Office action, dated 1/25/2005. Specifically, the --timestamp-- as defined by the Examiner (counter fields 226 and 228) can be considered as such since it signifies a time (during vying for a shared resource) in which a server has casted a --vote-- to become a primary server (having exclusive access to a shared resource). The particular way the claim has been drafted has led the Examiner to interpret the disk arbitration mechanism using the timestamp-based voting algorithm to arbitrate access of the servers to a set of D disks. It appears, based on the Applicant's arguments (page 15, paragraph 2) that the Applicant intends for the primary server (once elected), itself, to arbitrate the access of the servers to the set of disks. This argument is inconsistent with the Examiner interpretation of the claim as discussed herein as well as in the Final action. The Applicant's arguments filed, 11/10/2004, in the Response to the Non-Final action are silent with regard to the timestamp-based voting algorithm limitation that is argued in the present After-Final amendment. To overcome the current rejections and to coincide with what the Examiner believes the Applicant is eluding to in the filed arguments, the Examiner recommends amending the limitation of claims 1 and 7 to recite "a disk arbitration mechanism that uses a timestamp-based voting algorithm over the disk blocks associated with the servers to exchange votes for a primary server, the primary server arbitrating access of the servers to a set of disks of the D disks....." Note that such an amendment would thereby change the scope of the amended claims. Such an amendment would overcome the §103(a) rejections for claims 1, 8, and 9, under Reuter(1) in combination with Reuter(2) and the §102(e) rejections for claim 2-4, and 7, under Reuter(1).



MATTHEW D. ANDERSON
PRIMARY EXAMINER